

# OFFICIAL GAZETTE

## GOVERNMENT OF GOA

### SUPPLEMENT

#### GOVERNMENT OF GOA

Department of Labour

Order

No.28/3/92-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. N. Bhat, Under Secretary (Industries and Labour).

Panaji, 10th February, 1995.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri A. J. Agni, Hon'ble Presiding Officer)

Ref.No.IT/30/92

Workmen represented by  
Chowgule Employees' Union ... Workmen/Party I

V/s

M/s Chowgule Industries Ltd., ...Employer/Party II  
Margao-Goa.

Ref. No. IT/31/92

Workmen represented by  
Chowgule Employees' Union ... Workmen/Party I  
V/s  
M/s Chowgule Industries Ltd.,  
Margao-Goa ... Employer/Party II

Ref. No. IT/32/92

Workmen represented by  
Chowgule Employees' Union ... Workmen /Party I  
V/s  
M/s Chowgule Industries Ltd.,  
Margao-Goa ... Employer/Party II

Workmen/Party I/represented by Adv. T. Pereira.

Employer/Party II represented by Adv. M. S. Bandodkar.

Panaji, dated: 8-8-1994.

#### AWARD

These are the references made by the Government of Goa, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947). The above references can be conveniently disposed off by a common award, since the parties to all the references are the same, and the issues involved in the said references are inter-related to each other. Also, the settlement arrived at between the parties is also common for all the above three references.

2. The reference registered under No. IT/30/92 was made by Government of Goa, by order No. 28/3/92-LAB (c) dated 20-4-92 and the issue referred for adjudication by this Tribunal is as follows:-

1. Whether the action of the management of M/s Chowgule Industries Ltd., P. B. Box No. 306, Margao-Goa in declaring lock-out w.e.f. 19-11-91 is legal and justified?

2. Whether the workmen are entitled for wages for the lock-out period from 19-11-91 to 5-1-92?

3. If the answer to the above is negative, whether the workmen are entitled to any relief?

3. The reference registered under No. IT/31/92 was made by the Government of Goa, by order No. 28/3/92-LAB (b) dated 20-4-1992 and the issue referred for adjudication by this Tribunal is as follows:

Whether the demand of the workmen of M/s Chowgule Industries Ltd. P. B. No. 306, Margao, Goa, for 20% bonus for the Accounting year 1990-91 is legal and justified?

4. The reference registered under No. IT/32/92 was made by the Government of Goa, by order No. 28/3/92-LAB (a) dated 20-4-92 and the issues referred for adjudication by this Tribunal are as follows:

Whether the demands mentioned in the Schedule raised by Chowgule Employees Union (CITU) on behalf of the Workmen employed at Fatorda Workshop, Margao by management M/s Chowgule Industries Ltd. P. B. No. 306, Margao-Goa, are legal and justified?

The schedule is appended with as many as 9 demands for (i) Revision of Wages, (ii) House Rent Allowance, (iii) Conveyance Allowance, (iv) Canteen and Canteen Subsidy, (v) Uniform and Washing Allowance (vi) Safety Shoes, Raincoats and Gumboots, (vii) Leave Travel Allowance, (viii) Daily Allowances and (ix) Leave.

(b) Whether the demand of the Chowgule Employees Union representing the workmen employed at M/s Chowgule Industries Ltd., Fatorda Workshop, Fatorda, Panaji Sales Office and Mapusa Office for 20% Bonus for the Accounting year 1990-91 (8.33% bonus and 11.67% ex-gratia) is justified?

(c) Whether the action of the management of M/s Chowgule Industries Ltd. in declaring lock-out of their Fatorda Workshop, Fatorda, with effect from 19-11-91 is legal and justified?

If not, to what relief the workmen are entitled and from what date?

5. On receipt of the notice from this Tribunal, Party I-Workman (For short, 'Union') and the Party II-Employer (For short 'Employer') put in their appearance and filed their statement of claim and written statements respectively in all the above three references. After the issues were framed in Ref. No. IT/30/92, and IT/31/92, both the matters were posted for evidence. In Ref. No. IT/32/92, no issues were framed, and therefore the case was fixed for framing issues. All the above three cases were fixed for hearing on 16-6-93, before my learned Predecessor Shri M. A. Dhavale. However, on the said date, the matters could not be heard because my learned Predecessor had attained the age of superannuation and therefore the matters were adjourned sine-die. The reference No. IT/30/92 was fixed for hearing before me for the first time on 14-7-94 and the notice of hearing was duly issued to the parties. Adv. T. Pereira appeared for Party I-Union and Adv. M. S. Bhandodkar appeared for

Party II- Employer and stated that the dispute between the Employer and the Union was settled on 16-11-93. Adv. M. S. Bhandodkar filed a memo of settlement dated 16-11-93 along with an application dated 16-11-93 Exb. 7 duly signed by Shri A. M. Gaikwad, Sr. Manager (Pers. & Admn.) on behalf of the Employer and Shri S.S.Naik, General Secretary of the Union. Adv. M. S. Bhandodkar, however submitted that the settlement is common in respect of all the above references. Adv. T. Pereira for the Union submitted that he was not aware of the settlement and therefore requested for time to take proper instructions from the Union in the matter. The parties also requested that the said case be posted for hearing on 25-7-94 as the other two cases namely Reference Nos. IT/31/92 and IT/32/92 were fixed for hearing on the same day.

6. Accordingly, when all the above three cases came up for hearing on 25-7-94. Adv. T. Pereira for the Union confirmed that the settlement dated 16-11-94 Exb. 7 was arrived at between the Union and the Employer and that the settlement was common for all the above three cases namely Reference No. IT/30/92, IT/31/92 and IT/32/92. The copies of the memo of settlement dated 16-11-93 along with the application dated 16-11-93 for the disposal of the cases as mutually settled were also filed in reference case No. IT/31/92 and IT/32/92 at Exb. 7. Both the parties submitted that in view of the settlement dated 16-11-93 the above three cases be disposed off in terms of the settlement. I have gone through the Memo of settlement Exb. 7. The settlement is common for all the three above references and cover the issues involved in all the said three references. I am satisfied that the settlement is in the interest of the workmen of the Union. In view of this, I accept the submission made by the Union and the Employer and pass the consent award in terms of settlement dated 16-11-93 at Exb. 7, which is common in all the three above references.

## ORDER

### TERMS OF SETTLEMENT

#### 1. Scale of Pay:

It is agreed between the parties that effective from 1-4-1992 the following scale of pay shall be operative to different categories of permanent employees subject to the following :-

- (a) It is agreed between the parties that by 1-4-1994 all the employees who are working on the Washing Ramps will be absorbed in the Workshop as Helpers. Consequently, the Union and the employees agreed to the Management proposal to make separate arrangement for Car washing. It is further agreed that there will be only one category of Helper.
- (b) It is agreed by the Management to promote all Assistant Mechanics as Mechanic-I in the scale of Mechanic -I. It is further agreed between the parties to delete designation "Assistant Mechanic" as well as delete the said scale.

#### Operatives:

- (1) Helper : Rs. 250-10-350-15-500-18-680
- (2) Mechanic-I : Rs. 450-15-600-20-800-25-1050

- (3) Mechanic-II: Rs. 650-20-850-25-1100-30-1400
- (4) Mechanic-III : Rs. 750-25-1000-30-1300-35-1650
- (5) Sr. Mechanic : Rs. 850-30-1150-35-1500-40-1900
- (6) Works Supervisor: Rs.1000-35-1350-40-1750-45-2200

*Clerical :*

- (7) Jr. Steno/Typist clerical: Rs. 250-15-400-20-600-25-850
- (8) Jr. Assistant : Rs. 550-25-800-30-1100-35-1450
- (9) Sr. Assistant : Rs. 750-30-1050-35-1400-40-1800

2. *Fitment*:- The parties agreed to the following fitment formula:

To the existing Basic Pay of a Permanent employee as on 31-3-1992 an amount of Rs. 100/- shall be added. It is further agreed to merge in the existing Basic Salary an amount of Rs. 165/- from the existing Variable Dearness Allowance. The salary so arrived after adding Rs. 100/- and merging Rs. 165/- will be fitted in the corresponding stage in the revised scale. If there is no corresponding stage in the revised scale as per clause (1) than the same shall be fitted at the next higher stage. It is further agreed that any employee who reaches maximum of his pay scale, will continue to get his last drawn increment. For e. g. if a Helper is drawing Basic Salary of Rs. 90/- as on 31-3-1992, an amount of Rs. 165/- which is carved out from VDA and Rs. 100/- flat increase, will be added to his Basic Salary. Since the amount thus arrived at is Rs. 355/- doesn't fit in the revised scale, he will be fitted at Rs. 365/- in the revised scale of Helper, which will be his new Basic Salary as on 1-4-1992.

3. *Variable Dearness Allowance*:- The Variable Dearness Allowance will be neutralized at the base AICPIN 601 (1960-100) @ Rs. 1.80 per point rise or fall as follows:

1st January	Average of July to September
1st April	Average of October to December
1st July	Average of January to March
1st October	Average of April to June.

4. *House Rent Allowance*:- It is agreed between the parties that all permanent employees shall be paid House Rent Allowance @ 18% of their revised Basic Pay effective from 1-4-1992.

5. *Conveyance Allowance* :- It is agreed between the parties that the conveyance allowance of Rs. 3/- per day of attendance shall be enhanced to Rs. 5/- per day of their actual attendance with effect from 1-4-1992.

6. *Uniforms*:- The existing practice of providing 3 sets of Uniforms per year shall continue without any change.

7. *Leave*:- With effect from 1-1-1994 all the permanent employees shall be entitled for leave as per the following pattern:-

- a) Privilege Leave ... 20 days — accumulation 60 days.
- b) Sick Leave ... 6 days in the calendar year— Non-accumulative.
- c) Casual Leave ... 6 days in the calendar year— Non-accumulative.

8. *Leave Encashment*:- Earned Leave not exceeding 25 days can be encashed once in a calendar year. However, the employee has to keep minimum 5 days balance to his credit. For leave encashment Salary will be calculated on the basis of Basic Salary plus Variable Dearness Allowance only. Encashment of leave will not be "Salary" for any other purpose except for Income Tax.

9. The Union and Workmen hereby accept that this Settlement is in full and final settlement of all their demands and they withdraw their demands contained in Charter and not specifically mentioned herein above during the currency of this Settlement.

**General Clauses :-**

1. In view of overall settlement, the Union and the Management agreed to approach the Industrial Tribunal, Government of Goa, jointly with the Management to withdraw the following references pending before the Tribunal:-

- (i) Reference No. IT/32/92 in respect of Charter of Demands.
- (ii) Reference No. IT/31/92 in respect of Demand for 20% Bonus for the accounting year 1990-91.
- (iii) Demand for 20% Bonus for the accounting year 1991-92.
- (iv) Reference No. IT/30/92 in respect of lock-out and lock-out wages.
- (v) Application No. LCC/7/92 dated 19-2-1992 in respect of application under Section 33-C (2) of the I.D. Act, 1947.

2. *Ex-Gratia*:- Management further agreed to pay an amount of Rs. 750/- (Rupees Seven Hundred Fifty only) as ex-gratia amount to all permanent workmen who were on rolls of the Company as on 1-11-1991 in view of the above overall settlement.

3. It is agreed by the Union and workers to maintain industrial peace and harmony during the subsistence of the Settlement and they shall not resort to any direct action and they shall take recourse to the Conciliation Machinery provided under the Industrial Disputes Act, 1947.

4. It is agreed that the Union and the workmen shall extend their full co-operation to the Management for maximising the productivity.

5. All other existing service conditions, facilities and benefits which are not altered or substituted shall continue to be in effect.

6. It is agreed by the Union and the employees that they shall not raise any other demand involving financial liability on the Company.

7. It is agreed between the parties that the settlement shall be effective for a period of 4 1/4 years i.e. from 1-4-92 to 30-6-1996 and thereafter will continue to be effective/binding until terminated under the relevant provisions of the Industrial Disputes Act, 1947.

8. Management further agrees to give effect to the settlement in the Salary for the month of November, 1993. However, the

arrears arising out of the Settlement for the period from 1-4-1992 to 30-10-1993 shall be paid in 3 instalments as follows:-

- 1st instalment - on or before 31-12-1993
- 2nd instalment - on or before 28-2-1994
- 3rd instalment - on 1-4-1994.

9. Both the parties will submit their compliance report of the settlement to the Office of the Deputy Labour Commissioner, Margao, on or before 1-1-1994.

No order as to costs. Inform the Government accordingly about the passing of the award.

Sd/-  
(AJIT J. AGNI),  
Presiding Officer,  
Industrial Tribunal.

#### Order

No. 28/19/93-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. N. Bhat, Under Secretary (Labour).

Panaji, 21st February, 1995.

#### IN THE INDUSTRIAL TRIBUNAL

#### GOVERNMENT OF GOA

#### AT PANAJI

Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/36/93

Workman

rep. by the General Secretary

All Goa General Employees Union

Vasco da Gama

V/s

M/s Agencia Menezes & Cia.

Margao, Goa

Workmen/Party I

Employer/Party II

Panaji, dated: 14-2-1995.

#### AWARD

1. In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa, by order dated 22-4-1993 bearing No. 28/19/93-Lab referred the following dispute for adjudication by this Tribunal.

" Whether the action of the management of M/s Agencia Menezes & Cia, Margao in refusing to consider the following demands is legal and justified?

If not, to what relief the workmen are entitled to?

The schedule is appended with as many as 9 demands for (1) Pay scales (2) House Rent Allowance (3) Tea Allowance (4) Conveyance Allowance (5) Daily Allowance (6) Cash Handling Allowance (7) Overtime Payment (8) Leave (9) Wage Revision w.e.f. 1-1-1991 for 3 years.

On receipt of the reference, case was registered under No. IT/36/93 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. On 15-9-94, when the case was fixed for filing statement of claim by Party I, an application was filed by the workmen dated 31-8-94 duly signed by them stating that the workers of Party II had resigned from the membership of Party I/Union and that they had withdrawn the authority given to Party I/Union to represent them in the reference. The workmen also stated that they did not desire to pursue the reference. Adv. G. K. Sardesai, representing the Party II did not desire to file the statement of claim on its behalf.

3. The demands mentioned in the reference were raised by the workers through their Union. However, after the reference was made to this Tribunal, the workers resigned from the membership of Party I/Union and also withdrew the authority given to Party I/Union and further filed an application dated 31-8-94 to this effect in this Tribunal alongwith a copy of the notice addressed to Party I in this respect. In the said application the workers themselves have stated that they did not desire to pursue their demands. This being the position, it is established that the dispute does not exist and consequently, the reference does not survive. In the circumstances, I pass the following order.

#### ORDER

It is hereby held that the reference does not survive as the dispute does not exist since the workmen do not desire to pursue their demands.

There shall be no order as to costs.

Inform the Government accordingly.

Sd/-  
(AJIT J. AGNI),  
Presiding Officer,  
Industrial Tribunal.

#### Order

No. 28/4/94-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. N. Bhat, Under Secretary (Labour).

Panaji, 21st February, 1995.

IN THE INDUSTRIAL TRIBUNAL

ORDER

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/73/94

Workmen rep. by  
Gomantak Mazdoor Sangh.

... Workmen/Party I

V/s

M/s Ajanta Cashew  
Industries, Ponda-Goa.

... Employer/Party II

Party I represented by P. Goankar.

Party II represented by Adv. G. K. Sardessai.

Panaji, dated: 10-1-1995.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa by order dated 1-3-94 bearing No. 28/4/94-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Ajanta Cashew Industries, Apewal, Ponda, in refusing to concede to the following demands of the workmen represented by the Gomantak Mazdoor Sangh is legal and justified?"

The Schedule is appended with as many as 10 demands for (1) Scale of Pay, (2) Variable Dearness Allowance, (3) House Rent Allowance, (4) Dearness Allowance (5) Canteen Subsidy (6) Uniforms, (7) Washing Allowance, (8) Leave, (9) Sick Leave, and (10) Casual Leave.

2. On receipt of the reference, the case was registered under No. IT/73/94 and registered D. A. notice was issued to the parties. On 3-1-95 when the case was fixed for hearing Shri P. Gaonkar appeared for Party I and Adv. G. K. Sardessai appeared for the Party II and stated that the dispute between the parties was settled. Both the parties filed an application Exb. 4 along with Memorandum of settlement dated 21-10-94 and prayed that consent award be passed in terms of the settlement. The Memo of settlement is duly signed by the representative of the Party I and the representative of the Party II. I have gone through the terms of settlement and I am satisfied that the said terms are in the interest of the workmen - Party I. In the circumstances, I accept the submissions made by both the parties and pass the consent award in terms of the settlement dated 21-10-94.

1. Considering the fact that a substantial number of workmen have resigned from the establishment serving the Employer-Employee relationship, the balance workmen numbering less than 100 represented by Gomantak Mazdoor Sangh agree jointly and individually that he/she/they stand properly relieved from the services with effect from 31st March, 1994, on account of discontinuation of the operations at Apewal, Ponda-Goa, as if retrenched.
2. It is agreed between the parties that each of the workman on the roll of the Company as on the last working day shall be paid all their legal dues as shown in the Annexure 'A' to this settlement.
3. The employer agrees to pay the amount as shown in the annexure towards full and final settlement of each of the workman on or before 31-10-1994.
4. Union and their workmen agree that their dispute on account of discontinuation of operation in the factory and or as regards transfer of workmen against M/s Ajanta Cashew Industry, Apewal, Priol, Ponda, Goa stands conclusively settled.
5. It is agreed between the parties that workmen shall be given preference in employment in accordance with the provisions of section 25-H of the Industrial Disputes Act, 1947.
6. It is agreed between the parties that all other matters in dispute raised by the Union on behalf of any individual workman or a group of workmen stands settled as withdrawn and accordingly both agree that they shall jointly approach such authority with a copy of the settlement for obtaining orders for withdrawal of such case. Parties also agreed to file a copy of this settlement before Industrial Tribunal as both agree that the dispute on charter of demands stands settled as withdrawn.

No order as to costs. Inform the Government accordingly.

Sd/-  
(AJIT J. AGNI),  
Presiding Officer,  
Industrial Tribunal.

Order

No. 28/MISC/AWARDS/93-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

F. O. D'Costa, Under Secretary (Labour).

Panaji, 7th April, 1995.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref.No.IT/48/90

Smt. Kamalavati Desai,  
rep. by All Goa General  
Employees Union.

... Workman/Party I

V/s

M/s Industria Nacional de  
Telhas,  
Curchorem-Goa.

... Employer/Party II

Party I represented by Adv. T. Pereira.

Party II represented by Adv. B. G. Kamat.

Panaji, dated: 13-1-1995.

AWARD.

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa by order dated 19-10-90 bearing No. 28/55/90-LAB referred the following issue for adjudication by this Tribunal.

"Whether the superannuation of Smt. Kamalavati Desai, Labourer with effect from 31-3-1990, by the management of Industria Nacional de Telhas, Curchorem is proper ?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference, a case was registered under No. IT/48/90 and registered A.D. notice was issued to the parties. In pursuance to the notice both the parties put in their appearance. The Party I-Union (For short 'Union') was represented by Adv. T. Pereira and the Party-II Employer (For short, 'Employer') was represented by Adv. B. G. Kamat. The Union filed its statement of claim at Exb. 7. In the statement of claim the Union stated that the workman Smt. Kamalavati Desai was working in the factory of the Employers as Labourer situated at Curchorem, Goa. That on or about 3-11-89 the Employers served a notice on the workman alongwith 19 others informing them that they had crossed the age limit for retirement and that in case any of them had not reached the age of retirement he or she should produce birth certificate to prove it within a month's time. By letter dated 20-11-89 the Union enquired from the employers as to on what basis the employers had reached the conclusion that 20 workers had reached the age of superannuation. The Union also pointed out to the Employers that the workers in the year 1983 had already produced the certificate issued by the Village Panchayat. The Union therefore requested the employer to issue individual notice to the workers stating the basis on which the Employer had come to the conclusion that the concerned worker had reached the age of superannuation. That

the Employer thereafter informed the Union that the certificate issued by the Panchayat was invalid and the workers should produce the birth certificate so that the entire question would be automatically solved. By letter dated 28-12-89 the employer again called upon the workman—Smt. K. Desai to produce the birth certificate without any further delay. That thereafter by another letter dated 27-2-90 the employer informed the workman that the management had decided to retire her from 31-3-90 as she had already completed 58 years of age as per clause 30 of the Standing Orders. The workman in the meantime obtained birth certificate dated 5-3-90 and delivered the same to the General Manager for proper action. However, the employer refused to consider the said Certificate and retired the workman w.e.f. 31-3-90. The workman has contended that the act of the employer in retiring her w.e.f. 31-3-90 is illegal and unjust, and therefore has claimed reinstatement with other reliefs.

3. The Employers have filed the written statement at Exb. 13. In the written statement the Employers contended that the workman did not produce valid birth certificate to evidence her date of birth and on the contrary the physical appearance and in capacity for normal work was conclusive to prove that the workman had crossed the age of 58 years and therefore she was superannuated from 31-3-90. The Employers denied that the birth certificate was conclusive as far as the correct date of birth of the workman concerned. The Employer also sought leave to adduce independent medical evidence concerning the age of the workman to justify the order of superannuation. The Employers maintained that the order superannuating the workman w.e.f. 31-3-90 was legal and proper. The Union thereafter filed rejoinder at Exb. 14 controverting the pleadings made by the employers in the written statement.

3. On the pleadings of the parties, issues were framed which are as under:

1. Does Party No. I-Workman prove that her correct birth date is 5-5-1936 and as such she had not completed the age of superannuation on 31-3-1990 ?
2. If yes, whether order of retirement passed by Party No. II is illegal and unjust ?
3. If yes, is Party No. I entitled to any relief ?
4. What award or order ?

4. My findings on the issues are as follows:

1. Yes
2. Yes
3. As per para. 7
4. As per order below.

REASONS

5. Issue No. 1: The dispute is as regards retiring the workman Smt. Kamalavati Desai, the Labourer w.e.f. 31-3-90. The contention of the Union is that the workman was born on 5-5-36 and therefore she had not completed the age of superannuation which is 58 years as on 31-3-90. Adv. Pereira

representing the Union submitted that as per the notice dated 3-11-89-Exb. 15 and 28-12-89-Exb.14, the Employers had directed the workman to produce the birth certificate to prove her age and accordingly the workman produced the birth certificate Exb.16 which shows that the workman was born on 5-5-1936. Adv. Pereira therefore submitted that the workman would have attained the age of superannuation only on 5-5-1994 and not on 31-3-90 as claimed by the Employers as the workman would have completed 58 years on 5-5-1994. In this respect he drew my attention to clause 30 of the Certified Standing Orders of the Employers produced at Exb. 17 wherein it is stated that the workman would retire on reaching the age of 58 years. Adv. Pereira also referred to clause 34 of the Certified Standing Orders which states that the candidate for employment for the purpose of proving his age should produce either the birth certificate, school leaving certificate or Insurance Policy indicating "Age admitted". Adv. Pereira therefore submitted that the birth certificate produced by the workman was a valid document to prove her age. He further submitted that the workman produced the ration cards at Exb. 19 and Exb. 20 and from the age mentioned in the said ration cards it proves that the workman was born in the year 1936 and not in the year 1935. As regards the declaration form Exb. 24 he submitted that the date of the birth has not been mentioned in the said form and what is mentioned is only the year. Adv. Pereira stated that the workman is an illiterate woman and when she said that her age was 40 years as mentioned in the declaration form, it could be that she meant that she was running 40 years and in that case, the year of the birth would be 1936 and not 1935. He contended that the birth certificate was a public document and it was issued under the provisions of Registration of Births & Deaths Act, 1969 and therefore the date of birth mentioned in the said certificate is the conclusive proof of evidence as regards the date of birth. He also contended that though the employees had stated that they would adduce medical evidence concerning the age of the workman, no such evidence was led. Adv. B. G. Kamat representing the Employers on the other hand submitted that clause 34 of the Certified Standing Orders was not applicable to the case of the workman as the said Certified Standing Orders were not in operation when the workman was employed and no retrospective effect would be given to the said clause. He further submitted that the ration cards produced by the workman could not be relied upon as the contents of the same are based on the information given by the head of family who is the husband of the workman in this case. Adv. B. G. Kamat submitted that what is relevant is the declaration form-Exb. 24 submitted to the E.S.I. wherein the year of birth is mentioned as 1935. He relied upon the decision of the Allahabad High Court in the case of Ahmed Husain v/s Managing Director, Uttar Pradesh State Road Transport Corporation, and others reported in 1991 II LLN page.1049 in support of his above contention.

I have carefully considered the arguments advanced by both the learned counsels. The Certified Standing Orders of the Employers are on record. They are produced at Exb.17. The said Standing Orders were certified by the Asst. Labour Commissioner, the Certifying Officer, on 19-7-82 and therefore they came into operation on or about 19th Aug. 1982 as per the provisions of the Act. As per clause 34 of the said Standing Orders one of the modes of proving the age of the candidate for employment is the production of the birth certificate. However, from the declaration form Exb. 24 it can be seen that

the workman was employed in the year 1975 and the Certified Standing Orders came into force in August, 1982. This being the position, I agree that the submissions made by Adv. B. G. Kamat for the Employers that the said clause 34 cannot be made retrospectively applicable to the workman. Even then, it cannot be ignored that the production of the birth certificate is one of the acceptable modes adopted by the Employers to prove the age of the employee. Besides, by letters dated 3-11-89,— Exb. 15 and 28-12-89 Exb.14, the Employers themselves had directed the workman to produce the birth certificate to prove her age. Though the birth certificate was not produced by the workman within the time given by the Employers, it is a fact that the birth certificate was produced after obtaining the same on 5-3-90, but the Manager refused to accept the same. The workman has made a statement to this effect in her deposition and this part of her statement has not been denied by the Employers. The Employers have relied upon the declaration form Exb. 24 to establish the age of the workman. The declaration form only states the year of the birth and not the date of the birth. Therefore, the date of the birth would have been 1st January, 1935 and also 31st December, 1935. It is a settled law that in such a case only the last date of the year can be taken to be the date for calculating the age of superannuation. The reason being that in case of doubt benefit should go to the weaker side or to the person who would suffer more. When the Employers decided to retire the workman w.e.f. 31-3-90 on account of superannuation, there was absolutely no basis before the Employers to do so. The Employers have not led any evidence to show the basis on which the workman was retired w.e.f. 31-3-90. Even if it is presumed that the Employers had taken into account the year of birth of the workman as 1935 as mentioned in the declaration form, the retirement ought to have been w.e.f. 1st January, 1994 as the workman would deemed to have completed the age of 58 years on 31st December, 1993. Therefore, even based on the year mentioned in the declaration form, the employers could not have retired the workman on 31-3-90. The decision of the Allahabad High Court in the case of Ahmed Husain (Supra) relied upon the Employers is not applicable at all to the facts of the case. The decision does not lay down that the age mentioned in the records of the Employees State Insurance Corporation is to be accepted as the conclusive proof. Infact, in the said decision before the High Court such an argument was advanced on behalf of the Employer. But the High Court did not express any opinion on the same. Even otherwise there cannot be a better piece of evidence then the birth certificate to prove the age of a person. Birth Certificates are issued under the provisions of the Registration of Births & Deaths Act, 1969. Therefore the certificate issued under the provisions of the said Act is a public and authenticated document. The birth certificate is issued after following the procedure as prescribed under the Act and the Rules made thereunder. The Employers did not throw any challenge to the birth certificate Exb. 16 produced by the workman in the course of her evidence. Nor the Employers considered the said certificate when it was produced by the workman after it was obtained on 5-3-90. The Employers also did not put any suggestion to the workman when she examined herself that the date mentioned in the certificate is false or that the birth date was got entered in the records of the Registrar of Births & Deaths by mis-representation, fraud etc. It is also to be seen that it was the Employers themselves who had called upon the workman by letters dated 3-11-89 Exb. 15 and 28-12-89 Exb. 14 to produce the birth certificates in support of her age. It was therefore absolutely wrong on the part

of the Employer in not considering the birth certificate produced by the workman. Also, the ration cards for the years 1987 to 1989 and 1991 to 1993 Exb. 19 and Exb. 20 respectively, produced by the workman go to prove that the year of birth mentioned in the declaration form is not correct. Merely because information, as regards the contents of the ration cards is given by the husband, it does not mean that the information given is incorrect. The ration card Exb. 19 is of the year 1987 to 1989 i.e. much before the notice for retirement was given by the Employers. Therefore, it cannot be said that the age was deliberately mentioned as 50 in the said ration card to suit the purpose of the workman. Besides, the declaration form is filled in by the Employers and not by the workman. The workman in her deposition has stated that she is an illiterate person and this fact has not been denied by the Employers. There is some force in the submissions made by Adv. Pereira that when the workman gave her age as 40 years as mentioned in the declaration form it could be that what she meant was she was running 40 years and not that she had completed 40 years, and in that case, the year of birth would be the year 1936 and not 1935. From the declaration form it can be also seen that what is mentioned therein is only the year of birth and not the date of birth. The birth certificate Exb. 16 as I have stated earlier is a public document and the presumption is that it is genuine document and the entries made therein are true unless they are proved to the contrary. The Employers have not led any evidence to show that the date of birth mentioned in the birth certificate is false. As I have stated earlier, in fact, the Employers have not challenged the said birth certificate and no suggestion whatsoever was put to the witness that the date of birth mentioned in the birth certificate is false. There is therefore absolutely no reason as to why the date mentioned in the birth certificate should be disbelieved. In the written statement, the Employers had sought leave to adduce independent medical evidence to prove the age of the workman and to justify the order of superannuation. However, no such evidence was led by the Employers. There is nothing on record to doubt the genuineness of the birth certificate or the date of birth mentioned in the same. The birth certificate Exb. 16 which is a public document and hence deemed to be genuine shows that the workman was born on 5-5-1936. As per clause 30 of the Certified Standing Orders Exb. 17, the age of retirement is 58 years which is not disputed by the Employers. Therefore, the workman would have attained the age of retirement on 5-5-1994 and not on 31-3-90. In the circumstances I hold that the workman has succeeded in proving that her correct date of birth is 5-5-1936. I further hold that since the date of birth of the workman is 5-5-1936 as proved by her, she had not completed the age of superannuation on 31-3-1990. I, therefore answer this issue in the affirmative.

6. *Issue No. 2:* The Employers have retired the workman w.e.f. 31-3-90. In fact, the Employers have not led any evidence to support their action in retiring the workman w.e.f. 31-3-90. Also, there is absolutely no basis to retire the workman w.e.f. 31-3-90. This action on the part of the Employers is nothing but an arbitrary act. Even if the year of birth of the workman is taken as 1935, the workman would have completed the superannuation age of 58 years in the year 1993 and not in the year 1990. Therefore, on the face of it, the Employers could not have retired the workman in any event on 31-3-1990. While discussing the issue No. 1, I have held that the workman has succeeded in proving that her date of birth is 5-5-1936

which means that she would have completed the age of 58 years which is the date of superannuation only on 5-5-1994 as per clause 30 of the Certified Standing Orders. It therefore follows that the order passed by the Employers retiring the workman w.e.f. 31-3-90 is not proper. I, therefore, hold that the order of retirement passed by the Employers-Party II is illegal and unjust and answer this issue in the affirmative.

7. *Issue No. 3:* The workman has succeeded in proving that her date of birth is 5-5-1936. Thus, she has attained the age of superannuation on 5-5-1994 when she completed the age of 58 years. This being the position, the question of granting the relief reinstatement to the workman does not arise. In the circumstances, it is a fit case to compensate the workman suitably. The workman was retired on 31-3-1990 when she ought to have been retired on 5-5-1994 in the circumstances stated above. The difference therefore is of 4 years, one month and 4 days for which the workman is to be awarded compensation in lieu of salary to meet the ends of justice. In the circumstances the workman is entitled to the amount equal to salary for 4 years, one month and 4 days by way of compensation at the rate payable to her during the period 1st April, 1990 to 4th May, 1994 with all the benefits for illegally retiring her on 31-3-90. In view of the above, I pass the following order.

#### ORDER

It is hereby held that the superannuation of the workman Smt. Kamalavati Desai, Labourer with effect from 31-3-1990 by the Management of M/s Industria Nacional de Telhas, Curchorem, is not proper. The Management of M/s Industria Nacional de Telhas, Curchorem, shall pay to the workman — Smt. Kamalavati Desai the amount equal to salary for four years, one month and four days at the rate payable to her during the period 1st April, 1990 to 4th May, 1994 with all the benefits to which she would have been entitled to, if she had not been retired on 31-3-1990.

There shall be no order as to costs.

Inform the Government accordingly about the passing of the award.

Sd/-  
(AGIT J. AGNI),  
Presiding Officer,  
Industrial Tribunal.

#### Order

No. 28/42/91-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

F. O. D'Costa, Under Secretary (Labour).

Panaji, 10th April, 1995.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/47/91

Shri Pradeep Revodkar ... Workman/Party I  
Assonora,  
Bardez-Goa.

V/s

M/s Centaur Pharmaceuticals  
Pvt. Ltd.,  
Karaswada, Bardez-Goa. ... Employer/Party II

Party I represented by Adv. G. Shirodkar.

Party II represented by Adv. A. V. Salgaonkar.

Panaji, dated: 14-3-1995.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act, 14 of 1947) the Government of Goa by order dated 22-10-91 bearing No. 28/42/91-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Centaur Pharmaceuticals Pvt. Ltd., Karaswada, Goa, in terminating the services of Shri Pradeep Revodkar with effect from 28-9-89, is legal and justified.

If not, to what relief the workman is entitled?"

2. On receipt of the reference the case was registered under No. IT/47/91 and Regd. A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. Party (for short, "Workman") filed statement of claim at Exb.5. In the statement of claim the workman stated that he was working with the Party II (for short, "Employer") as an Operator w.e.f. 8-7-1988 on monthly salary of Rs. 300/-. That on 28-9-89 when the workman went to resume his duties he was orally told by the Employer that he should not resume his duties w.e.f. 29-9-89 and that he would be taken back in service after three months. Accordingly, the workman on 2-1-90 went to resume his duties. However, the employer refused to take the workman in employment without assigning any reason. The Employer told the workman to report for duties after 3 months and accordingly on 2-4-90 went to resume his duties but at this time also the employer did not allow the workman to resume his duties and directed him to report for duties on 2-7-90. However, again on 2-7-90 when the workman went to resume his duties the employer told him

that he should report for duties on 1-10-90. Accordingly the workman went to resume his duties on 1-10-90 but the employer told the workman that he would be issued an official letter and thereafter only he could resume his duties. Thereafter, the workman received a letter dated 23rd October 1990 from the Accounts Officer of the Employer informing him that an amount of Rs. 273 is outstanding to his credit and that he should collect the same amount. However, no letter was sent to the workman asking him to resume the duties. The workman therefore served a legal notice through his Advocate on the employer dated 17-11-90 demanding reinstatement within 7 days from the date of the receipt of the said notice. In spite of the receipt of the notice the employer refused to reinstate the workman on the ground that he was engaged on trial basis as a casual workman and that his services were discontinued as he was found unsuitable. The workman therefore by letter dated 28-12-90 raised an industrial dispute before the Labour Commissioner, Panaji, Goa. However, the conciliation proceedings resulted in failure. The contention of the workman is that the act on the part of the employer in not allowing the workman to resume his duties w.e.f. 29-9-89 amounts to illegal retrenchment and hence the workman is entitled to reinstatement with full back wages.

3. The Employer filed a written statement at Exb. 6. In the written statement the employer contended that it had to carry out production of pharmaceutical products on trial basis till about December, 1988 and thereafter the Employer started manufacturing products on regular basis. The Employer further contended that since its company was new it did not have orders for the production of drugs on permanent basis and the size of orders placed before it was always fluctuating. That as a result of uncertainties of the orders the Employer used to engage workers on temporary basis in groups and the said workers were being discharged from service whenever there were no orders. The employer contended that workman Pradeep Revodkar was one of such workman who was employed on temporary basis and it was found that in spite of opportunities given to him in two sections namely liquid and injection, he was not found suitable and he was not performing his duty up to the marked level and therefore he was not recalled after his temporary period of service ended on 21-6-1989. The employer admitted that conciliation proceedings were held before the Assistant Labour Commissioner, Mapusa. However, the Employer submitted that the workman failed to attend the proceedings on two occasions as he had been already working with M/s Goa Plastics at Bicholim Industrial Estate. The Asst. Labour Commissioner therefore closed the conciliation proceedings and gave the failure report. The Employer denied that after 28-9-89 the Employer called the workman after every three months. The Employer further denied that it had illegally terminated the services of the workman or that the workman was entitled to reinstatement with back wages. Thereafter the workman filed rejoinder at Exb. 7 controverting the pleadings of the Employer made in the written statement.

4. On the pleadings of the parties issues were framed at Exb. 8 and thereafter the case was posted for recording the evidence of the workman. On 17-2-95 when the case was fixed for hearing Adv. G. Shirodkar remained present alongwith the workman and Shri A. V. Salgaonkar representing the Employer also remained present. Both the parties submitted that the dispute between the parties was amicably settled and filed an application for passing award in terms of the settlement contained in the application Exb.10 dated 3-2-1995. I have gone through the terms of the settlement and I find that the settlement is certainly in the interest of the workman. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 3-2-1995 Exb. 10.

#### ORDER

1. It has been agreed that Employer/Party II will pay and the workman/Party I will accept the sum of Rs. 50,000/- (Rupees fifty thousand only) in full and final settlement of his claims made in the above Reference.
2. It has been agreed that the aforesaid amount will be paid on 10th February, 1995 by Cheque and upon receipt of the said amount the Workman/Party I will not have any claim against Employer/Party II of whatsoever nature.

No order as to costs. Inform the Government accordingly about the passing of the award.

Sd/-  
(AJIT J. AGNI),  
Presiding Officer,  
Industrial Tribunal.

#### Order

No. 28/60/93-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

F. O. D'Costa, Under Secretary (Labour).

Panaji, 10th April, 1995.

#### IN THE INDUSTRIAL TRIBUNAL

#### GOVERNMENT OF GOA

#### AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/59/94

Shri Lucas Pereira and 3 others ... Workman/Party I  
Utorda, Majorda, Goa.

V/s

M/s Ramada Renaissance Resort, ... Employer/Party II  
Fatorda, Salcete-Goa.

Party I absent.

Party II represented by Adv. M. S. Bandodkar.

Panaji, dated: 16-3-1995.

#### AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa by order dated 15-12-1993 bearing No. 28/60/93-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Ramada Renaissance Resort, in dismissing S/Shri Lucas Pereira, Judas Vaz, Jovito Rego and Salvador Rodrigues from services with effect from 20-5-1993 is legal and justified?"

If not, to what relief the workmen are entitled?"

2. On receipt of the reference a case was registered under No. IT/59/94 and Registered A/D notice was issued to the Party I (for short 'Workman') and Party II (for short 'Employer'). The workman Shri Lucas Pereira, Shri Judas Vaz and Shri Jovito Rego were duly served with the notice but did not appear. As regards the notice sent to the workman Shri Salvador Rodrigues, the same was returned unserved with postal endorsement 'Party out of station'. The Employer was represented by Adv. M. S. Bandodkar. On 2-3-95 when the matter was fixed for hearing Adv. M. S. Bandodkar appeared on behalf of the Employer and filed a copy of the Memorandum of settlement duly signed by the representative of the Employer and the workman, alongwith an application dated 2-3-95 stating that the parties have settled the dispute by settlement dated 9th July, 1994 and praying that the reference be disposed of according to the settlement. I have gone through the terms of the settlement dated 9th July, 1994 Exb. 2 and I find that the settlement is certainly in the interest of the workmen. In the circumstances, I accept the submissions of the parties and pass the consent award in terms of the settlement dated 9th July, 1994 Exb. 2.

ORDER

It is agreed by the parties that all these workmen shall submit their resignation letter effective from 20th May, 1993.

2. The management shall accept the resignation letter with immediate effect and it is agreed between the parties that the management shall pay to each of the individual workmen the total sum of Rs. 15,000/- (Rupees fifteen thousand only) in full and final settlement of their claim arising of their employment with the company which shall include gratuity, leave salary, notice pay, ex-gratia etc.

3. All these workmen shall accept this amount of Rs. 15,000/- each in full and final settlement of all their claim arising out of their employment with the company and further confirm that they shall not have any claim whatsoever nature against the company including any claim of reinstatement or re-employment.

4. It is agreed that the workmen be issued a service certificate.

No order as to costs. Inform the Govt. accordingly.

Sd/-  
(AJIT J. AGNI),  
Presiding Officer,  
Industrial Tribunal.

order

No. 28/MISC/AWARDS/93-LAB.

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

F. O. D'Costa, Under Secretary (Labour).

Panaji, 18th April, 1995.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/25/89

Shri Arthur Viegas,  
Dramapur,  
Salcete-Goa.

Workman/Party I

V/s

M/s M.R.F. Ltd.,  
Ponda-Goa.

Employer/Party II

Party I represented by Adv. Guru Shirodkar.

Party II represented by Adv. G. K. Sardessai.

Panaji. dated: 27-3-95.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa, by order dated 30th March, 1989 bearing No. 28/54/88-ILD referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s M.R.F. Limited Usgao, Ponda-Goa, in terminating the services of Shri Arthur Viegas, Mechanic, with effect from 25-11-1987 is legal and justified?"

If not, what relief the workman is entitled to?"

2. On receipt of the reference a case was registered under No. IT/25/89 and Registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Party I (for short "Workman") was represented by Adv. Guru Shirodkar and the Party II (for short "Employer") was represented by Adv. G. K. Sardessai.

3. The workman filed his statement of claim at Exb.2. The case of the workman as set out by him in his statement of claim is that he joined the services of the Employer as a Mechanic on 11-9-78, and continued to work as such till 25-11-87 when he was dismissed from service. In the month of May, 1987 the workman received a charge sheet dated 15-5-87 from the employer wherein it was stated that on 13-3-1987 at about 9.15 p. m. the workman along with 20 to 30 other people entered the Velankini Guest House, situated at Miramar, Panaji-Goa, assaulted three of the staff members of the employer namely Shri Venu Gopal, Gopal Krishnan and Daniel Thomas, with lathis, iron rods and chains. The said acts according to the Employer amounted to misconduct under items VI, VII and LII of clause 21 of the Certified Standing Orders. The workman replied to the said charge sheet denying the allegations made against him and stated that the said charges were false, fabricated, and baseless and made with a view to victimise him since he was the active member of the Union. Thereafter the workman received a notice dated 18-6-87 from the Employer informing him that the enquiry would be held on 3-7-1987 at 10.30 a.m. The workman stated that in the enquiry he was not allowed to be represented by Union leader and he did not agree to be represented by a co-worker as no worker was willing to assist him in the enquiry for the fear that his services might be terminated. The workman also contended that no opportunity was given to him for examining the witnesses in his defence. In substance the workman contended that the enquiry held against him was not fair and impartial. After the enquiry was completed, the enquiry officer gave his findings holding that the charges levelled against the workman stood proved. Based on the findings of the enquiry officer, the employer passed the order dated 25th November, 1987, dismissing the workman from services. The contention of the workman is that the order of dismissal passed by the Employer is illegal and unjustified. According to the workman the findings of the enquiry officer are contrary to the standing orders of the

employer as the charges levelled against him in the charge sheet did not amount to misconduct as per the standing orders. He also contended that the findings of the enquiry officer are not based on evidence on record and they are perverse. He further stated that there was no evidence on record to show that he was present at the time of the alleged incident, and merely identifying him from the album which was not exhibited in the course of the enquiry was fallacious and improper. The workman further contended that on the night of the alleged incident he was at his residence at Salcete and the supervisors were tutored by the management to identify the workman from the album so as to falsely implicate him. The workman therefore stated that since the findings of the enquiry officer were itself perverse and not supported by evidence, the order of dismissal passed by the Employer, which is based on the findings of the Enquiry Officer, is illegal and unjustified and hence liable to be set aside.

4. The employer filed the written statement at Exb.3, denying that the order of dismissal passed against the workman was illegal or unjustified. In the written statement the employer contended that though the charge sheet was received by the workman, no explanation to the charges was submitted by him. The employer stated that inspite of the opportunity given the workman did not examine himself nor examined any witness in his defence. The employer contended that since as per the findings of the enquiry officer, the charges of misconduct were proved against the workman, considering the gravity of the misconducts, the employer terminated the services of the workman. The employer denied the contention of the workman that the charges levelled against him did not fall within the ambit and scope of item Nos.6, 7 and 52 of the clause 21 of the Certified Standing Orders, because though the incident of assault had taken place outside the premises of the company, the assault was on the supervisory staff of the company. The employer denied that no fair or proper opportunity was given to the workman to defend himself in the enquiry or that the enquiry was not impartial. The employer stated that as per the standing orders, the workman was entitled to be represented by a co-worker and the workman himself admitted in his statement of claim that he did not agree to be represented by a co-worker. The employer contended that the evidence produced before the enquiry officer proved the charges of misconduct levelled against the workman and the findings of the enquiry were supported by the evidence on record. The employer denied that the termination of the services of the workman was by way of victimisation as alleged by the workman. The employer therefore submitted that the reliefs sought by the workman were liable to be rejected.

4. On the pleadings of the parties, following issues were framed at Exb. 4:

#### ISSUES

1. Whether a fair and proper enquiry was held against the workman with reference to the charge-sheet dated 13-2-87 relating to the assault on a loyal worker?
2. Whether the workman fully participated into the enquiry and whether principles of natural justice were followed at the time of the enquiry?

3. Whether the Inquiry Officer ought to have allowed the workman to be represented by a Union leader and not by a co-worker and whether this refusal amounted to failure of justice, as the workman was not given an opportunity to produce his evidence in his defence?

4. Whether the report of the Inquiry Officer is based on proper evidence in the case and whether the management was justified on relying on the findings and terminating the services of the workman?

4-A Whether Party I proves victimisation as alleged in para.7(i) of his claim statement?

5. Whether the action of the management in terminating the services of the workman Arthur Viegas, Mechanic w.e.f. 25-11-87 is just and legal in the circumstances of the case?

6. If not, what reliefs if any, is the workman entitled to?

5. The issue Nos. 1 to 3 were treated as preliminary issues and evidence was recorded on the said issues. The said issues were disposed off by my learned Predecessor Shri M. A. Dhavale by order dated 13th October, 1992 holding that the enquiry conducted was fair and proper and that the workman fully participated in the enquiry. My learned Predecessor also held that there was no failure of justice on the part of the enquiry officer in conducting the enquiry. Accordingly, issue Nos. 1 and 2 were answered in the affirmative and the issue No. 3 in the negative.

6. After the findings were given on issue No. 1 and 3, the parties were directed to lead evidence on other issues. Accordingly evidence was led by both the parties. On considering the evidence on record my findings on the remaining issues are as under:

Issue No. 4 - In the affirmative.

Issue No. 4 - A In the negative.

Issue No. 5 - In the affirmative.

Issue No. 6 - The workman is not entitled to any relief.

#### REASONS

7. Issue No. 4: It is the contention of the workman that the findings of the enquiry officer are not based on evidence. It is in fact the case of the workman that there is no evidence at all to prove the charges against him. Adv. G. Shirodkar representing the workman submitted that none of the witnesses examined by the Employer in the enquiry has seen the workman taking part in the assault on the three supervisors or assaulting any one of them. He referred to the statement of Mr. Daniel Thomas recorded before the Enquiry Officer as well his statement recorded on the next day of the incident i.e. on 14-5-1987 and submitted that though Mr. Daniel Thomas was the injured person. In both of his statements he has not said a word against the workman. He also referred to the statement of Mr. Venugopal recorded on 14-5-1987 and stated that though he was assaulted and he died subsequently, he did not implicate the workman in any way. Adv. Shirodkar therefore submitted that in case the workman had participated in the incident of assault on the supervisors, the above two persons who were themselves the victims would have stated so in their statements. As regards the statements of Mr. Ravindranathan and

Mr. Sowrirajan recorded in the enquiry proceedings and their statements recorded after the incident on 14-3-1987, Adv. Shirodkar contended that their statements cannot be relied upon and that they have falsely implicated the workman. He submitted that the incident of assault had taken place in the hall and the above two persons were in their room. They have not seen the workman assaulting any of the supervisors. He further submitted that it is hard to believe as to how the workman could have been identified by the said two persons among 30 or odd persons. According to Adv. Shirodkar, the evidence that has been brought on record by the Employer in the enquiry is as regards attempting to assault the supervisors Mr. Ravindranathan and Mr. Sowrirajan, which is contrary to the contents of the charge sheet. He contended that the workman was not charged for attempting to assault the supervisors but for having assaulted them with severe injuries with the help of lathis, rods and chains along with other persons. Adv. Shirodkar therefore submitted that the enquiry was vitiated and findings of the Enquiry Officer were liable to be set aside. According to Adv. Shirodkar, the charges framed against the workman should be proved beyond reasonable doubt and if this is not done, the findings of the Enquiry Officer were liable to be set aside and consequently the order of termination of service was also liable to be set aside. In support of his this contention he relied upon the decision of the Calcutta High Court in the case of Engineering Project of India Ltd., v/s Chandra Dip Yadav reported in 1987 FLR Vol. 55 Pg., 714. He also relied upon the decision of the Supreme Court in the case of Rajinder Kumar Kindra v/s Delhi Administration reported in AIR 1984 S. C. 1805 on the point that evidence should be appreciated properly and if there is no proper appreciation of evidence, the findings are liable to be set aside. The other point which is urged by Adv. G. Shirodkar is that the charges levelled against the workman in the charge sheet did not amount to misconduct as per the Certified Standing Orders, and therefore the findings of the enquiry officer were contrary to the standing orders. He therefore submitted that the management of the Employer was not justified in relying on the said findings and terminate the services of the workman.

Adv. Shri G. K. Sardesai, representing the employer, on the other hand submitted that there was sufficient evidence to prove the involvement of the workman in the incident of assault on the supervisory staff on 13-5-1987. He submitted that though none of the witnesses examined by the Employer have identified the workman as one of the persons who had actually assaulted the supervisors, nevertheless it is in evidence of Shri Ravindranathan and Shri Sowrirajan that the workman was among the group of people who were hitting Venugopal, Shri Daniel and Shri Gopalkrishna with lathis, chains and iron rods. He submitted that the said witnesses have stated that the workman along with the others had attempted to assault them. Adv. G. K. Sardesai contended that when a person is a member of group whose common intention is to commit an offence, each and every member of the group is liable for the offence committed and it is not necessary that it must be proved what act each and every member of such group has done. Adv. Sardesai further contended that in the enquiry before this Tribunal, the workman for the first time contended that he was at home during the night of 13-3-1987. However, before the Enquiry Officer neither he examined himself nor he examined any witnesses in his defence even though opportunity was given to him. He further submitted that the domestic enquiry is not of the nature of a criminal trial and hence

it is not necessary that the charge should be proved beyond reasonable doubt as contended by the workman. In support of his this contention he relied upon the decision of the Bombay High Court in the case of S. K. Awasthy v/s M. R. Bhope, Presiding Officer, 1st Labour Court & Others, reported in 1994 I CLR 254. He also relied upon the decision of the Supreme Court in the case of State of Haryana v/s Ratan Singh reported in 1982 (1) LLJ 46 in support of his contention that strict rules of the Indian Evidence Act are not applicable to the domestic enquiry proceedings and even hearsay evidence is permissible. Adv. Sardesai submitted that in the written statement the employer had stated that criminal case filed against the workman was pending in the sessions court and this fact was not disputed by the workman. According to Adv. Sardesai the findings of the enquiry officer were on proper evidence and therefore the employer accepted the findings and since the misconducts were of grave nature, the employer was justified in terminating the services of the workman.

I have carefully considered the arguments advanced by both the learned counsels. I have also gone through the evidence recorded before the Enquiry Officer as well as before this Tribunal. It is a settled law that the Tribunal has powers to re-appraise the evidence led by the parties in the domestic enquiry. The Supreme Court, in the case of Workmen of M/s Firestone Tyre and Rubber Company of India Pvt. Ltd., v/s The Management & Others, reported in AIR 1973 S. C. 1227 has held that since the introduction of Section 11-A in the Industrial Disputes Act, 1947, the Tribunal was clothed with the power to appraise the evidence in domestic enquiry and satisfy itself as to whether the said evidence relied on by the employer established the misconduct alleged against the workman. In the case of E. Merck (India) Ltd. v/s V. N. Parulekar and Others reported in 1991 (2) Bom. C. R. 201 the Bombay High Court held that it is the duty of the Tribunal to re-appraise the evidence and satisfy itself as to whether misconduct alleged against the workman is proved or not. It is therefore to be seen whether evidence led before the Enquiry Officer and this Tribunal establishes the misconduct alleged against the workman and whether the findings of the Enquiry Officer are based on such evidence or not. I have gone through the entire evidence, led by the parties before the Enquiry Officer as well as before this Tribunal. The main contention of the workman is that the evidence led by the employer in the domestic enquiry does not establish beyond reasonable doubt that he was involved in the incident of assault on the Supervisors on 13-5-1987. Adv. G. Shirodkar has particularly relied upon the statement of Mr. Daniel Thomas recorded in the domestic enquiry as well as the complaint of Mr. Venugopal, dated 14-3-87. According to him both these persons who were the victims of the assault have not uttered a word against the workman nor they have stated that he was present along with the other people at the time of the incident of assault. It is true that the said two persons have not implicated the workman in the assault on them. However, Mr. Ravindranathan and Mr. Sowrirajan in their deposition before the Enquiry Officer, have clearly stated that the workman was one among the group of about 15 people who were assaulting the supervisors Mr. Venugopal, Mr. Gopalkrishnan and Mr. Daniel Thomas. They have identified the workman from the photograph album shown to them. They have said that they identify him because they had seen him on several occasions near the gate of the

Factory at Usgao, while they were entering or leaving the gate of the factory. They have stated that they had seen the workman in the hall of the guest house, the place of assault, when they came out of their room after hearing the noise and shouts in the hall. They have also stated that seeing them coming out, the workman and some persons from the group rushed towards them to attack them, and they were armed with lathis, iron rods, chains. These two witnesses have not been much cross examined. In fact the credibility of these witnesses has not at all been shaken. Adv. Shirodkar has sought to argue that the said two witnesses have sought to falsely implicate the workman. However, there is no material on record to substantiate this contention of the workman. It is possible that since Mr. Gopal Krishnan and Mr. Daniel Thomas were being assaulted they did not notice the workman in the group of 15 to 20 people, as they were busy in protecting themselves from the assault. However, this is not the case with Mr. Ravindranathan and Mr. Sawrirajan, and therefore they were able to identify the workman in the group of people. I do not find any reason to disbelieve the witnesses Mr. Ravindranathan and Mr. Sawrirajan. Also, in their statements dated 14-3-87 recorded immediately, after the incident, they have stated that the workman was one of the persons among the group of 15 people who had assaulted Mr. Mr. Gopal Krishnan, Mr. Venugopal and Mr. Daniel Thomas. Therefore, the presence of the workman in the Valankani Guest House along with 15 other persons for assaulting the supervisors is established. It is true that none of the witnesses of the Employer have stated that they have seen the workman actually assaulting the supervisors. What is on record is that the workman was one among the persons who were assaulting the supervisors. It is a settled law that when an act is done in furtherance of a common intention, each and every member of the group is liable for such an act. The Calcutta High Court in the case of Barka alias Mohammed Sultan and others v/s State of West Bengal reported in 1988 (1) Crimes 129 has held at para. 11 of its judgment that common intention is to be gathered from the act, or conduct or other relevant circumstances of the case. In the said case the High Court held that coming together armed with knives, assaulting the deceased without any provocation with knives, and leaving together after commission of the crime, proved that there was common intention. Similarly in the present case also, it is in evidence that the workman had come along with the other 15 to 20 people armed with lathis, chains etc., assaulted the supervisors with the same and all left together after the assault was committed. Therefore in the present case also it is to be held that there was common intention to commit the offence. This being the case, the workman would be responsible for the acts committed by the other members of the group even if it is accepted that nobody had seen the workman actually assaulting the supervisors. Further the workman in his statement before this Tribunal in his cross examination stated that the workers who were on strike did not like the supervisors having been brought from outside that is, from Madras, to run the factory and he also did not like the same. This statement of the workman is very relevant for establishing common intention in assaulting the supervisors. It is also pertinent to see that in spite of giving the opportunity to the workman to submit his reply to the charge sheet within the time specified in the charge sheet, no reply was given by the workman. He submitted the reply only on the date of conducting of the enquiry. If the workman was not involved in the incident of assault his normal reaction would have been to immediately send his reply denying his involvement in the incident.

However, the workman did not do so. Also, in his statement before this Tribunal, the workman stated that at the time of the incident of assault, he was at home. If this was so, he ought to have examined himself in defence and also examined some witness in his defence. However, the workman neither examined himself nor any witness in the enquiry. Therefore, adverse inference ought to be drawn against him. The Bombay High Court in the case of S. K. Avasthy v/s M. R. Bhope reported in 1994 (1) CLR 254 has held that, "in a criminal trial, no adverse inference can be drawn against an accused if the accused does not enter the witness box. It is the cardinal principal of criminal jurisprudence that ordinarily the accused is not bound to open his mouth and the presumption of innocence would operate throughout. No such principle is applicable in a civil proceeding or in domestic enquiry or in a proceeding before Labour Court, Industrial Court or Industrial Tribunal. If the management discharges initial onus which lies on it to prove the allegations and the workman fails to discharge the shifted onus, the case of the workman must suffer." In the present case the employer had discharged its initial onus to prove that the workman was one among the group of 15 people who had assaulted the supervisors, by examining Mr. Ravindranathan and Mr. Sawrirajan. Mr. Daniel Thomas, another supervisor, who was also the victim of the assault, has confirmed the presence of Mr. Ravindranathan and Mr. Sawrirajan in the guest house at the time of the incident. Through the said witnesses the presence of the workman at the time of the incident of assault is proved. If it is the case of the workman that he was at home at that time, he ought to have proved the same by examining himself and/or same witnesses in his defence. The workman has failed to do the same. According to Adv. Shirodkar, in a domestic enquiry the charges levelled against the workman should be proved beyond reasonable doubt and if there is any doubt it should go in favour of the workman. Adv. Shirodkar submitted that the employer had failed to prove the guilty of the workman beyond reasonable doubt and hence he could not have been held guilty of the charges by the Enquiry Officer. He relied upon the decision of the Calcutta High Court in the case of Engineering Project of India Ltd., v/s Chandra Dip Yadav reported in 1987 FLR Vol. 55 pg 714, in support of his above contention. Adv. Shri Sardesai representing the Employer however, relied upon the decision of the Bombay High Court in the case of S. K. Awasthy v/s M. R. Bhope reported in 1994 (1) CLR 255 on the point that the standard of proof required to be applied is of preponderance of probabilities, and not beyond reasonable doubt as contended by the workman. In the first place if there is any decision of the Bombay High Court I am bound by the said decision. I have gone through the decision of the Bombay High Court. In the said case the Bombay High Court has held in para. 12 of its judgment as follows:

"It is well settled that the Indian Evidence Act is not applicable to the evidence recorded before the Labour Court or Industrial Tribunal and even hearsay evidence is admissible. It is also well settled that the standards of a criminal trial cannot be applied in a departmental or an enquiry before the Labour Court or Industrial Court even if the charge is of criminal nature. The standard of proof required to be applied is of preponderance of probabilities."

Applying the above principles laid down by the Bombay High Court, I hold that there is sufficient evidence to prove that the workman had taken part in the assault on the supervisors and also had attempted to assault Mr. Ravindranathan and Mr. Sawrirajan. The above acts of the workman are the acts of misconduct and fall within the clauses VI, VII and LII of the Standing Orders of the Employer, as the said acts were connected with the employment of the workman with the Employer and the same were done during the period when the workmen were on strike. The workman in his statement before this Tribunal in his cross-examination has admitted that the supervisors were brought from Madras to run the factory and that the workers including the workman himself did not like the supervisors having been brought from Madras. I have gone through the findings of the Enquiry Officer and I do not find anything wrong in the said findings. The Enquiry Officer has properly assessed the evidence brought on record by the Employer, and there is proper application of mind on the part of the Enquiry Officer. I, therefore, hold that the report of the Enquiry Officer is based on proper evidence in the case. Since the report of the enquiry Officer is based on proper evidence in the case, the Employer was justified in accepting the said findings of the Enquiry Officer and relying upon the same and consequently terminating the services of the workman. In the circumstances I answer the issue No.4 in the affirmative.

8. *Issue No. 4-A* : The contention of the workman is that by way of victimisation he has been falsely implicated in the incident of assault on the supervisors on 13-3-1987 as he was the active member of the Union and was always on the fore front in its activities. The Supreme Court in the case of *Bharat Iron Works v/s Bhagubhai* reported in AIR 1976 SC at page 98 has held that victimisation is to be pleaded and the particulars constituting victimisation should be stated so as to enable the employer against whom victimisation is pleaded is able to meet out the charge effectively. In the present case except for stating in the statement of claim that the workman was an active member of the Union and that he was on the fore front of the Union activities, no other particulars are given by the workman as to how he was victimised. It is admitted by the workman himself that the supervisors were brought from Madras to run the factory. The workman has been identified by two of the supervisors and there is nothing on record to show that the relations of these two supervisors namely Mr. Ravindranathan & Mr. Sawrirajan were not good vis-a-vis the workman. There is absolutely no reason why the said supervisors would falsely implicate the workman. The only evidence that which is brought on record by the workman is that he was the group leader during the strike period. He has examined one witness Mr. Cyril Fernandes who has also deposed to the same effect. The workman as well as the said witness have admitted that the workman was not the office bearer of the Union. They have also admitted that they have no evidence to prove that the workman was the group leader. However, this evidence is not sufficient to hold that the workman was victimised. This being the case, I hold that there is no evidence to prove that the workman was falsely implicated in the incident of assault by way of victimisation. The Supreme Court in the case of *Bharat Iron Works (Supra)* has held merely because a person is an active member of the Union or that he is

an office bearer, victimisation cannot be inferred in the absence of evidence. I, therefore, answer the issue in the negative.

9. *Issue No. 5 & 6* : The incident involved in the present case is the assault on the supervisors of the employer. The said supervisors were brought from Madras as the workers were on strike. It has come on record through the evidence of the workman when he examined himself before this Tribunal that the workers did not like the supervisors coming from Madras to run the factory and that he also did not like it. The workers therefore had a grudge against the supervisors which resulted in the assault on them. The employer in its written statement has stated that there is a criminal case filed against some workmen including the workman in the court of sessions in respect of the said incident of assault. This fact has not been denied by the workman by filing a Rejoinder. The employer has produced the Hurt certificates Exb. 6 colly, in respect of the supervisors Mr. Venu Gopal, Mr. Gopalkrishnan and Mr. Daniel Thomas. The said certificates show that Mr. Venu Gopal and Mr. Gopal Krishnan received as many as 8 injuries on their body and Mr. Daniel Thomas received 4 injuries. It is also an admitted fact that Mr. Venu Gopal subsequently succumbed to the injuries. Therefore, the death of Mr. Venu Gopal was a direct result of the assault on him by a group of workers of the Employer. While discussing the other issues, I have held that it is proved by evidence that the workman was among the group who assaulted the said supervisors with lathis, chains, rods. Therefore, the workman is equally responsible for the assault on the supervisors and causing number of injuries to them. It is also in evidence that the workman alongwith the others had attempted to assault the supervisors Mr. Ravindranathan and Mr. Sowrirajan. The above act of the workman is an act subversive of discipline and is of a serious nature. It cannot be forgotten that an innocent person has lost his life because of the indiscriminate act on the part of the workman and the other group of workmen. The employer was therefore justified in terminating the services of the workman because indiscipline of such a grave nature has to be viewed seriously which otherwise would be harmful to the running of the factory and also would have adverse effect on the other workers. There is loss of confidence on the part of the employer. I, therefore hold that the action of the management in terminating the services of the workman w.e.f. 25-11-1987 is just and legal. In the circumstances, the workman is not entitled to any relief, and hence I answer the issues accordingly. In the result, I pass the following order.

#### ORDER

It is hereby held that the action of the Management of M/s. M.R.F. Limited, Usgao, Ponda, Goa, in terminating the services of Shri Arthur Viegas, Mechanic with effect from 25-11-1987 is legal and justified.

There shall be no order as to costs. Inform the Government accordingly.

Sd/-  
(AJIT J. AGNI),  
Presiding Officer,  
Industrial Tribunal.

## Order

No. 28/MISC/Awards/93-Lab

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

F. O. D'Costa, Under Secretary (Labour).

Panaji, 28th April, 1995.

## IN THE INDUSTRIAL TRIBUNAL

## GOVERNMENT OF GOA

## AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref./ No. IT/50/91

Shri S. V. Lele,  
Curchorem-Goa.

... Party I

V/s

The Chief Electrical Engineer,  
Electricity Department,  
Panaji-Goa.

... Party II

Party I absent.

Party II represented by Adv. K. Y. Thaly.

Panaji, dated: 24-3-95.

## AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa by Order dated 30-10-1991 bearing No. 28/16/91-LAB has referred the below said dispute for adjudication by this Tribunal.

- (1) Whether Shri S. V. Lele, Ex-Jr. Engineer, Electricity Department, Government of Goa, is a workman as per Section 2 (s) of the Industrial Dispute Act, 1947?
- (2) If so, whether the action of the Chief Electrical Engineer, Electricity Department, Government of Goa, Panaji in terminating the services of Shri Lele with effect from 31-7-90, is legal and justified?
- (3) If the answer to (2) above is negative, to what relief Shri Lele is entitled?

2. On receipt of the reference, a case was registered under No. IT/50/91 and registered A/D notice, was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Party I filed his statement of claim at Exb. 3. The case of the Party I in brief is that he was initially appointed in the services of the Party II as Sectional Officer w.e.f. 13-3-1970 and he was confirmed in the post in or around the

year 1974. The post of the Sectional Officer was subsequently redesignated as Jr. Engineer w.e.f. the year 1975 and the party I continued to be employed on the said post till the date of the termination of his service. The contention of the Party I is that a list for promotion of Junior Engineers to the post of Assistant Engineer was prepared by Party II in the year 1983. Though the Party I was one of the seniormost employees in the Department, his name was not considered for promotion and consequently his name was not included in the list. He therefore made a representation pointing out the injustice done to him. However, instead of considering the representation sympathetically, and promoting the Party I to the higher post, the Chief Electrical Engg. issued letters containing adverse remarks in his confidential reports for the previous four years. The contention of the Party I is that adverse remarks cannot be entered in the confidential reports of a Government employee without pointing out the same to him in advance and without seeking and considering his explanation thereto. Party I therefore submitted his representation for deleting the adverse remarks. However, instead of deleting the adverse remarks the Assistant Engineer and the Chief Electrical Engg., started harassing him with a view to teach him a lesson for demanding promotion. As a part of harassment, the Party I was given heavy duty, leave when applied was refused, his salary was held up without sufficient reason and he was issued memos without any reasonable cause. On account of this harassment, the Party I suffered in his mental health and he could not attend to his duties for sometime in the year 1986-87. It is the case of the Party I that after recovering from illness he resumed the duties in 1987 and submitted the medical fitness certificate from the Government physician. However, the medical certificate produced by him was not accepted by the higher officials and he was not sanctioned leave and memos were served on him on silly pretexts. Thereafter on 12-8-88, the Party I was served with a memo levelling several charges against him. Some of the charges which were levelled against him were that he remained on unauthorised absence from 28-4-86 till 19-6-1987 and that during this period he failed to carry out duties entrusted to him and also addressed several letters to the Executive Engg., Div. VI, Mapusa and Chief Electrical Engineer in most derogatory language. The Party I was also informed that an enquiry would be held into the charges levelled against him. Accordingly, Shri R. V. Durbatkar was appointed as the Enquiry Officer and the workman participated in the said enquiry. The Party I has contended that the enquiry held against him was not fair and proper and that the same was held in violation of the principles of natural justice and fair play. The party I also contended that he was not given proper opportunity to defend himself and to produce his evidence. After the enquiry was completed the Enquiry Officer gave his findings on 1-3-1990. According to the Party I, the said findings are not based on evidence on record and are perverse. The Party II accepted the said findings and dismissed the Party I from service by order dated 31-7-90. The contention of the Party I is that the misconduct alleged against him was not proved in the enquiry held against him. He further contended that the order of termination of his service passed by the Party II is illegal and unjustified. The Party I therefore claims reinstatement with full back wages.

3. The Party II filed a written statement Exb. 4. In the written statement the Party II raised a preliminary objection that the Party I was appointed as a Sectional Officer and hence he is not a workman within the meaning of 'Workman' as defined in the Industrial Disputes Act and that therefore this Tribunal has no jurisdiction to proceed with the reference. The Party II denied that any injustice was caused to the Party I by not promoting him. The Party II contended that the name of the Party I figured at Sr. No. 14 with yearwise gradings from 1976 to 1981. The Party II further denied that the various Memos issued to the Party I from time to time were to harass him. The Party II contended that the said Memos were issued to the Party I as he was refusing to carry out the time bound work entrusted to him from time to time and also have remained absent unauthorisedly. The Party II contended that since the Controlling Officer was not satisfied with the medical certificate produced by the Party I, he was directed to appear before the Medical Board of Goa Medical College and when he was examined by the Assistant Professor of the G. M. C., it was found that the Party I had no head injury and he was fit to resume his duties and accordingly a medical certificate was issued to that effect. The Party I stated that the charges levelled against the Party I were proper as also the findings given by the Enquiry Officer after completing the Enquiry. The Party II also justified the order of dismissal of the Party I from service.

4. On the pleadings of the parties following issues were framed at Exb. 6.

1. Does Party I prove that he is a workman as defined in Section 2 (s) of the Industrial Disputes Act, 1947?
  2. If not, whether this reference is tenable?
  3. Does Party I prove that the departmental inquiry held against him is not fair and proper for the reasons stated in para. 13 of his claim statement?
  4. Does he further prove that the findings recorded by the Enquiry Officer is not based on proper appreciation of evidence as alleged?
  5. Does he prove that the action of Party II in terminating his services w. e. f. 31-7-91 is not legal and justified?
  6. To what relief Party I is entitled to?
  7. What award or order?
5. My findings on the issues are as follows:
1. In the negative.
  2. In the negative.
  3. Does not arise.
  4. Does not arise.
  5. Does not arise.
  6. Party I is not entitled to any relief.
  7. As per order below.

#### REASONS

6. After the issues were framed the case was posted for recording the evidence of the Party I on the issued cast on

him. On 17-12-92 the statement of Party I was partly recorded at Exb. 7 and the examination in chief of the Party I was adjourned to 30th Jan., 1993 at the request of the Party I as he stated that he wanted to engage the services of an Advocate to defend him in the case. On 30-1-93 when the case was taken up for hearing the Party I remained present in person and prayed for time which was granted and the case was adjourned to 15-4-93. However, on the said date, the Party I did not attend the hearing and therefore the case was adjourned to 18-6-93. On the said date also, the case could not be taken up due to the superannuation of my learned Predecessor Shri M. A. Dhavale. Thereafter, when the case was again taken up for hearing before me, the parties were duly notified. On 20-7-94 when the case was fixed for hearing the Party I remained present in person and the case was adjourned to 5-9-94 for recording the further examination in chief of the Party I. However, on the said date the Party I submitted that he wanted to file an application for directing the Party II to produce certain documents and prayed for time. Accordingly, the case was adjourned and fixed on 26-9-94 for filling the proper application by the Party I. However, on 26-9-94 and on the subsequent dates i.e. on 24-10-94, 6-12-94 and 19-1-95 the Party I remained absent and therefore the evidence of Party I was closed. Adv. K. Y. Thaly representing the Party II filed an application that he did not want to lead any evidence on behalf of the Party II as all the issues to be proved were on the Party I. Therefore, the case was adjourned and final arguments were heard on 2-2-95. Adv. K. Y. Thaly representing the Party II, submitted that since it was the case of the Party I that the termination of his services by the Party II was illegal and unjustified the burden was on him to prove the same. He submitted that the Party I in spite of the opportunities given did not lead evidence nor produced any documentary evidence to show that the termination of his services was illegal and unjustified. He further submitted that the burden to prove the all issues were cast on him and since he has failed to discharge this burden, this Court is bound to hold that the order of termination is legal and justified.

I have considered the arguments advanced by Adv. K. Y. Thaly, representing the Party II. It is true that the burden was cast on the Party I to prove all the issues framed at Exb. 6. Party I examined himself partly on 17-12-92 and the further examination in chief of the Party I was adjourned at his request on the ground that he wanted to engage the services of an advocate. After 17-12-92 no further evidence of the Party I was recorded. The Party I did not subject himself for cross examination by the Employer. The Party I had sought time to time for filling an application for permitting him to produce certain documents. However, no such application was made nor any documents were produced. In fact, from 26-9-94 the Party I stopped attending the Court and therefore, after giving ample opportunities to the Party I to appear in the case and lead evidence, I had no alternative but to close the evidence of the Party I on 19-1-95 as the Party I failed to attend the hearing and lead evidence in the matter. Since the issues were on the Party I to prove the same it was

incumbent upon him to lead evidence and prove the said issues. However, the Party I failed to discharge his burden in proving the said issues. One of the issues for decision by this Tribunal was whether Shri S. V. Lele is a workman as defined in Section 2(s) of the Industrial Disputes Act, 1947 and if he is not a workman whether the reference is tenable. The issue to prove that Shri S. V. Lele is a workman was cast on him i.e. on the Party I himself. Since he did not lead any evidence to prove that he is a workman, I have no alternative but to answer the issue No. 1 in the negative. It has been held by the Calcutta High Court in the case of Swapna Das Gupta & Others v/s The First Labour Court of West Bengal and Others reported in 1976 Lab. I. C. page 202 and by the Kerala High Court in the case of N. C. John v/s Secretary, Thodupuzha Taluk Shop & Commercial Establishment Workers Union and others reported in 1973 Lab. I. C. page 398, that when a person asserts that he was a workman and there was Employer-Employee relationship, the burden is on him to prove the same. Further, it has been held by the Allahabad High Court in the case of V. K. Raj Industries v/s Labour Court (I) and others reported in 1981 (29) FLR 194 that the proceedings before the Industrial Court are judicial in nature and if no evidence is produced by the Party challenging the validity of the order, he must fail. The Allahabad High Court has further held that it is well settled that if a Party challenges the legality of an order the burden lies on him to prove illegality of the order and if no evidence is produced the Party invoking jurisdiction of the Court must fail. In the present case, it is the Party I who had challenged the legality of the order of termination of his service. In the facts and circumstances of the case, the burden was on him to prove that he is a 'workman' as per Section 2(s) of the Industrial Disputes Act, 1947 and that the order of termination of his services was illegal and unjustified. However, there is no material evidence on record to hold that the Party I is a 'workman' as defined in Section 2 (s) of the I. D. Act, 1947. In the circumstances, I hold that the party I-Shri S. V. Lele is not a workman as per Section 2(s) of the Industrial Disputes Act, 1947. Since it is held by me that the Party I-Shri S. V. Lele is not a workman as defined in Sec. 2(s) of the Industrial Disputes Act, 1947, it supposes that the provisions of the Industrial Disputes Act, 1947 are not applicable and therefore the reference made by the Government is not tenable and hence the same is liable to be rejected. In the circumstances, I answer the issues accordingly and pass the following order.

#### ORDER

It is hereby held that Shri S. V. Lele, Ex-Junior Engineer, Electricity Department, Government of Goa, is not a 'Workman' as per section 2(s) of the Industrial Disputes Act, 1947. I further hold that the reference is not maintainable and hence it is rejected.

There shall be no order as to costs. Inform the Government accordingly about the passing of the award.

Sd/-  
(AJIT J. AGNI),  
Presiding Officer,  
Industrial Tribunal.

Order

No. 28/57/93-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the

provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

F. O. D'Costa, Under Secretary (Labour).

Panaji, 23rd June, 1995.

#### IN THE INDUSTRIAL TRIBUNAL

#### GOVERNMENT OF GOA

#### AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/65/94

Shri Santosh Kerkar,  
73, Khadpa band,  
Ponda-Goa.

... Workman/Party I

V/s

M/s Cine Aaisha,  
Ponda-Goa.

Employer/Party II

Party I - absent.

Party II - represented by Adv. P. G. Sawardekar.

Panaji, dated: 28-4-1995.

#### AWARD

In exercise of the powers conferred by clause (b) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa by Order dated 2-12-1993 bearing No. 28/57/93-LAB referred the following dispute for adjudication by this Tribunal.

(1) "Whether the action of the management of M/s Cine Aaisha, Ponda, Goa, in terminating the services of Shri Santosh Kerkar, Rewinder, with effect from 30-4-93 is legal and justified?"

(2) If not, to what relief the workman is entitled?

2. On receipt of the reference, a case was registered under No. IT/65/94 and registered A/D notice was issued to the parties. Both the parties were duly served with the notice. On 30-9-94 when the case was fixed for filing of statement of claim by the Part I (For short, "Workman") Shri V. S. Sawant appeared on behalf of the workman and prayed for time to file statement of claim. Hence the case was adjourned to 25-10-94 for filing of statement of claim by the workman. However, on the said date the workman again prayed for time and the case was adjourned to 21-11-94. On this date as well as on the subsequent dates of hearing i.e. on 16-12-94, 13-1-95 and 20-1-95 the workman did not file the statement of claim inspite of the opportunity given. Thereafter, the Party II (For short, "Employer") who was represented by Adv. P. G. Sawardekar filed its statement at Exb.4. The workman or his representative remained absent on all dates of hearing from 20-1-95 and therefore the case was proceeded in the absence of the workman and subsequently evidence of the employer was recorded.

3. In the statement filed by the employer at Exb.4, the employer stated that on 18-12-90 the workman was taken as an apprentice for the work of door keeper initially for a period of

3 months on payment of stipend of Rs. 300 p.m. The employer stated that the workman was irregular in attending to his duties and was also untrustworthy besides remaining absent without prior intimation. The employer contended that the workman was told that he would be issued letter of appointment after he satisfactorily completed the period of 3 months. That the workman used to collect advances from time to time and the employer had warned the workman that in case he did not improve his conduct he would not be offered employment. Then, after 10th March, 1991 the workman absconded and abandoned his services and for some time he started working with a Contractor working with Ciba & Company and thereafter worked as a Conductor on "Devata Bus" plying from Panaji to Codar and back. The employer denied that there was any termination of services of the workman by the employer and stated that infact the workman had abandoned his apprenticeship from 10th March, 1991. Since the workman remained absent and did not participate in the proceedings, evidence of the employer was recorded in the absence of the workman. Shri Sheikh Noor Mussa, Partner of Cine Aaisha examined himself on behalf of the employer. In the course of his deposition Shri S. N. Mussa produced documents namely the extract of account book-Exb.E-1(colly) wherein the amounts advanced to the employees are mentioned; a xerox copy of the cheque Exb.E-2 issued in favour of the workman for an amount of Rs.660/- and the xerox copies of the wage register for the period from January, 1991 to March, 1991 Exb.E.3 (colly) in support of the case of the employer.

4. I have considered the oral as well as the documentary evidence produced by the employer. In fact, the reference of dispute has been made by the State Government at the instance of the workman. It is the case of the workman that the employer illegally and without any justification terminated his services w.e.f. 30-4-1993 and therefore he raised the industrial dispute which was referred to this Tribunal by the Government for adjudication. It is now a settled law that if a party challenges the legality of the order, the burden lies upon that party to prove that the said order is illegal. In the case of V. K. Raj Industries V/s Labour Court(1) and others reported in 1981(29) F.L.R. page 194, the Allahabad High Court has held that the proceedings before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court but the principles underlining the said facts are applicable. The Allahabad High Court has further held that if a party challenges the validity of the order the burden lies on him to prove the invalidity of the order and if no evidence is produced the party invoking jurisdiction must fail. The High Court has further held that if the workman fails to appear or to file written statement or produce evidence the dispute referred by the Government cannot be answered in favour of the workman and he would not be entitled to any relief. I am entirely in agreement with the said decision of the Allahabad High Court. In the present case, since it is the grievance of the workman that the termination of his services by the employer is illegal and unjustified, it was for him to prove that there was termination of his services by the employer and the same was illegal and unjustified. However, inspite of several opportunities having been given the workman did not file any statement of claim nor produced any evidence. The employer on the other hand filed its statement denying that there was termination of the services of the workman and contended that the workman had voluntarily abandoned the services from 10th March, 1991. Therefore, in the absence of any evidence

from the workman, it cannot be held that there was termination of services of the workman or that the termination was illegal and unjustified. As I have said, the employer had filed its statement contending that the workman was employed on temporary basis for 3 months from 18th December, 1990 and before the period could expire the workman voluntarily abandoned the services from 10th March, 1991. The employer also contended that all the dues of the workman were paid by cheque dated 30-4-93. The employer has examined its Partner Shri Sheikh Noor Mussa in support of his case. The employer has produced documents namely the extracts of the wage register for the period from January, 1991 to March, 1991. Exb.E-3 (colly) wherein the names of regular employees to whom the wages are paid are mentioned. The employer has also produced the xerox copy of the cheque for Rs. 660/- dated 30-4-93 Exb. E-2 issued in favour of the workman. The deposition of Shri Sheikh Noor Mussa has gone unchallenged and I have no reason to disbelieve his statement which is made on oath. The extracts of the wage register for the period from Jan., 1991 to March, 1991 show that the name of the workman does not figure therein. The witness Shri Mussa has stated that the said register contains the names of only those employees who are regularly employed in service by the employer. This supports the case of the employer that the workman was employed temporarily for a period of 3 months from 18th Dec., 1990. The witness Shri Mussa also stated that the workman stopped attending his duties from 10th March, 1991 and he returned only on 30-4-93 to collect his dues. This statement of the witness is not disputed. The employer has also produced the copy of the cheque dated 30-4-93 issued in favour of the workman for Rs. 660/- in support of its case that the dues of the workman were duly paid. Considering the above evidence, oral as well as documentary, produced by the employer, I hold that the employer has succeeded in proving that the services of the workman were not terminated but he voluntarily abandoned the services from 10th March, 1991. I also hold that the workman is not entitled to any relief. In the circumstances, I pass the following order.

#### ORDER

It is hereby held that there is no termination of services of the workman Shri Santosh Kerkar by the management of M/s Cine Aaisha, Ponda, Goa, but the workman voluntarily abandoned services from 10th March, 1991. It is further held that the workman Shri Santosh Kerkar is not entitled to any relief.

No order as to costs. Inform the Government accordingly.

Sd/-  
(AJIT J. AGNI),  
Presiding Officer,  
Industrial Tribunal.

#### Order

No. 28/55/92-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

F. O. D'Costa, Under Secretary (Labour).

Panaji, 23rd June, 1995.

## IN THE INDUSTRIAL TRIBUNAL

## GOVERNMENT OF GOA

## AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/12/93

Shri Dinanath Parab,  
Rep. by Newspaper & Press Employees  
Union (Goa), Betim-Goa. .... Workmen/Party I

V/s

M/s Compas Printers & Binders,  
Panaji-Goa. .... Employer/Party II

Party I represented by Shri N. J. Rebello.

Party II represented by Adv. P. J. Kamat.

Panaji, dated: 19-4-1995.

## AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa, by order dated 21-12-92 bearing No.28/55/92-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Compas Printers and Binders, Panaji-Goa, in terminating the services of Shri Dinanath Parab, Printer, with effect from 27-8-91 is legal and justified?"

If not, to what relief the workman is entitled?

2. On receipt of the reference a case was registered under No. IT/12/93 and registered A/D notice was issued to the parties. In pursuance to the notice, the parties put in their appearance. The Party I (for short, 'Workman') was represented by Shri N. J. Rebello and the Party II was represented by Adv. P. J. Kamat. The workman filed his statement of claim which is at Exb. 3. The facts of the case in brief as set out by the workman in his statement of claim are that the Party II (for short, 'Employer') is a Printer and Publisher of a weekly known as GOA POST. The Employer never gave proper treatment to its workman and violated all the rules prescribed under various labour legislations in the State. That the Employer also did not give appointment letters, did not give leave and paid meagre salary to its workers. The workmen on joining the newspaper and press employees union, by letter dated 27-5-91, demanded the implementation of the provisions of Shops & Establishment Act. That thereafter by another letter dated 14-8-91, the workmen demanded the issuing of letters of appointment to all the staff members of the employer and also demanded the maintaining of the registers of salary payment. That the said letter was delivered by the workman and having done so, the Employer threatened to dismiss the workman in case he did not resign from the Union. Since the workman refused to do so, the Employer terminated his services w.e.f. 27-8-91 without giving the workman one month's notice or paying wages in lieu of notice or any compensation as provided under the law. The workman contended that the Employer terminated his services without holding any

enquiry. The contention of the Union is that the termination of the services by the Employer is illegal and unjustified and therefore he claimed reinstatement with full back wages.

3. The Employer filed the written statement which is at Exb. 6. The Employer stated that it started the work of Printing and Binding from 21-8-88 and it engaged in all 6 workers. The Employer further stated that there was increase in work of temporary nature and therefore temporary hands were engaged for a few days depending upon the availability of work and the workman was one of such temporary Printer who was engaged whenever there was temporary increase in work. The Employer contended that the workman was a free lance printer and used to work at different places with different persons on temporary basis. The Employer denied that the workman was employed on regular basis and stated that the contention of the workman that his services were terminated was false. The Employer further contended that since the workman was not employed on regular basis the question of giving him notice or wages in lieu of notice or payment of compensation u/s 25F of the Industrial Disputes Act, 1947 did not arise. The workman thereafter filed rejoinder which is at Exb.7.

4. After the issues were framed the case was fixed for recording evidence of the workmen. However, on 17-4-95 the workman appeared in person and Adv. P. J. Kamat appeared on behalf of the Employer and they submitted that the dispute between the parties was amicably settled. The workman and the Employer filed the consent terms dated 10-4-95-Exb. 10 duly signed by them and prayed that consent award be passed in terms of the consent terms. I have gone through the consent terms dated 10-4-95 and I am satisfied that the settlement is certainly in the interest of the workman. I, therefore, accept the submission made by the parties and pass the consent award in terms of the consent terms dated 10-4-95- Exb.10.

## ORDER

1. It is agreed between the parties that the Party II shall pay a sum of Rs. 3,000/- (Rupees three thousand only) to the Workman- Party I in full and final settlement of all his claims.
2. It is agreed between the parties that in view of clause (1) above, the Party I-Workman does not press his claim for reinstatement in service with all the benefits.
3. It is agreed between the parties that the amount in clause (1) above, shall be paid to the Party I-Workman on or before 30-4-1995.
4. The Party I- Workman agrees that he has no claim of whatsoever nature against the Party II/Employer on payment of the amount in clause (1) above.

There shall be no order as to costs. Inform the Government accordingly about the passing of the award.

Sd/-  
(AJIT J. AGNI),  
Presiding Officer,  
Industrial Tribunal.

**Order**

No. 28/39/89-LAB

The following Award given by the Industrial Tribunal, Goa, Daman & Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

*F.O.D'Costa*, Under Secretary (Labour).

Panaji, 23rd June, 1995.

**IN THE INDUSTRIAL TRIBUNAL**

**GOVERNMENT OF GOA**

**AT PANAJI**

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/61/89

Shri Narayan Pednekar,  
Bandiwada, Durbhat,  
Ponda Goa.

...Workman/Party I

V/s

M/s Progress Workshop,  
Bazarmol, Ponda-Goa.

.... Employer/Party II

Party I represented by Adv. B. G. Kamat.

Party II represented by Shri S. V. Cuncolienkar.

Panaji, dated: 12-5-1995.

**AWARD**

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act 1947 (Central Act 14 of 1947), the Government of Goa by Order dated 28-8-89 bearing No. 28/39/89-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Progress Workshop, Ponda, in terminating the services of their workman Shri Narayan Pednekar, Turner, with effect from 14-2-87 is legal and justified?

If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/61/89 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Party I (for short, 'workman') was represented by Adv. B. G. Kamat and Party II (For short, 'Employer') was represented by Shri S. V. Cuncolienkar.

3. The workman filed his statement of claim which is at Exb.4. The contention of the workman is that he had been in continuous service of the employer from 1st March, 1976 as a

Turner till the time his services were terminated by the employer w.e.f. 14-2-1987. That there was no specific contract of employment executed between him and the employer and as such the relationship between the workman and the employer was governed by the provisions of Industrial Disputes Act, 1947. That by letter dated 9th May, 1987 his services were terminated by the employer by striking out the name from the muster roll which according to the workman amounted to retrenchment within the meaning of Sec. 2(00) of the I.D. Act, 1947. The contention of the workman is that before striking out his name from the muster roll the mandatory provisions of Sec. 25-F(a) & (b) of the Industrial Disputes Act, 1947 were not complied with by the employer and therefore the order of retrenchment dated 9-5-87 is invalid and inoperative. The workman has prayed reinstatement with full back wages and consequential reliefs.

4. The employer filed a written statement which is at Exb. 5. The employer admitted that the workman was its employee since 1st March, 1976. However the employer stated that the workman was irregular in attending to his duties prior to his abandonment of services since 14-2-87. The employer contended that the workman was working elsewhere for bettering his prospects. That the workman was directed by letter dated 20-3-87 to resume his duties with satisfactory explanation for his absentism. That thereafter another letter was sent to the workman informing him that since till the date he had not resumed his duties the management of the employer had decided to treat his services as abandoned and directed him to collect his dues. Thereafter the employer received a letter from the workman dated 11-3-87 objecting for termination of his services. That the workman did not demand reinstatement but demanded the payment of his legal dues together with gratuity. The contention of the employer is that till the time the industrial dispute was raised by the workman he never demanded reinstatement. That in the conciliation proceedings before the Asst. Labour Commissioner, the employer stated that the workman had abandoned his services and the employer had further stated that it had no objection for taking the workman back in service w.e.f. 21-3-88 to end the controversy, and the dispute as regards back wages and other dues be referred to the Tribunal for adjudication. However, the workman did not accept the proposal of the employer nor joined the duties. The employer contended that the reference was invalid since it speaks only about the termination of services and not abandonment of the services by the workman. The employer denied that there was any retrenchment of the services of the workman as claimed by him in his statement of claim and therefore stated that the provisions of Sec. 25-F(a) & (b) were not applicable to the present case. The employer prayed that the reference be dismissed as invalid and void.

5. Thereafter, on the pleadings of the parties, the following issues were framed at Exb.6:

1. Whether the services of the workman were in fact terminated on 14-2-87 or whether he abandoned his services as claimed by the Party II/Employer?
2. Whether the termination of the services w.e.f. 14-2-87 is an order of retrenchment or whether it is a termination simplicitor?
3. To what reliefs is the workman entitled to?

6. The above issues framed by my learned predecessor on the merits of the case. However, before deciding the above issues it is necessary to decide the main point which goes to the very root of the matter, that is, whether the reference made by the Government is invalid and bad in law. The employer in its written statement at para. 3 has raised objection as regards the validity of the reference. In para. 3 of its written statement, the employer has contended that the reference is bad in law because it reflects only as regards the termination of the services and does not speak of abandonment of the services by the workman though the conciliation officer clearly indicated in his failure report that the employer had treated the services of the workman as abandoned. This being the case, before going into the merits of the case, it is necessary to decide first the validity of the reference. Infact, an issue ought to have been framed to this effect. However, this objection being a point of law and since the parties had advanced arguments on the point of validity of reference, I propose to decide the objection as regards the validity of the reference first.

7. Shri S. V. Cuncolienkar representing the employer, contended that the reference of the dispute for adjudication made by the Government is as regards the termination of the services of the workman from 14-2-87 and whether the termination is legal and justified. Shri Cuncolienkar submitted that the Government has assumed that there is termination of services of the workman by the employer as a matter of fact, while all along it has been the contention of the employer that it did not terminate the services of the workman but he abandoned the same. Shri S. V. Cuncolienkar contended that in the conciliation proceedings before the Asstt. Labour Commissioner, the employer had taken a stand that there was no termination of service of the workman but he had abandoned his services. He referred to the failure report of the Asst. Labour Commissioner and stated that in the said report, the Asst. Labour Commissioner had stated that the employer had treated the services of the workman as abandoned. He therefore submitted that the real dispute between the parties was not whether the termination of the services was legal and justified but whether the services of the workman were terminated or whether he abandoned his services. Shri Cuncolienkar contended that since there was no reference to abandonment of services in the terms of reference made by the Government, the Tribunal had no jurisdiction to go beyond the terms of reference and decide whether the workman had abandoned his services. Shri Cuncolienkar therefore submitted that the reference made by the Government was invalid and bad in law. In support of his contention Shri Cuncolienkar relied upon the decision of the Bombay High Court in the case of Sitaram Shirodkar v/s Administrator, Govt. of Goa and others reported in 1985 I LLJ 480 and the decision of this Tribunal in the case of Shri Atmaram Kerkar v/s M/s Shridhar A. Gadekar in case No. IT/17/85. Adv. B. G. Kamat on the other hand submitted that the decision of the Bombay High Court in the case of Sitaram Shirodkar (Supra) is distinguishable. He submitted that in the case of Sitaram Shirodkar no issue as regards abandonment of services was framed by the Court whereas in the present case such an issue has been framed and in that respect he referred to the issue No. 1 framed by this Court. He further submitted that issues are to be framed as per the pleadings made by the parties and the Court cannot confine itself only to the issue referred in the reference. Adv. B. G.

Kamat therefore submitted that even though the reference does not speak about the abandonment of services, still since the employer has taken the stand as regards the abandonment of service by the workman, this court has jurisdiction to decide whether it is a case of termination of services or it is a case of abandonment. Adv. Kamat therefore contended that the reference was valid and maintainable.

8. I have carefully considered the arguments advanced by both the parties. The dispute referred by the Government for adjudication is as under:

"Whether the action of the management of M/s Progress Workshop, Ponda, in terminating the services of their workman Shri Narayan Pednekar, Turner, with effect from 14-2-87 is legal and justified?"

From the above reference it is clear that what is referred by the Government for adjudication by this Tribunal is whether the action of the employer in terminating the services of the workman w. e.f. 14-2-87 is legal and justified and if it is not legal and justified whether the workman is entitled to any relief. Admittedly, there is no reference to abandonment of services in the terms of reference made by the Government. The contention of the employer is that in the conciliation proceedings before the Asst. Labour Commissioner, the Employer has stated that it had not terminated the services of the workman but the workman had abandoned his services. The minutes of the conciliation proceedings dated 7-10-88 and the failure report dated 12-12-88 have been produced at Exb. 16-E and 17-E respectively. In the minutes of the conciliation proceedings Exb. 16-E it has been mentioned that the employer had filed its written statement wherein the employer contended that it had not terminated the services but the workman himself abandoned his services. In the failure report Ex. 17-E also it has been mentioned by the Asst. Labour Commissioner that the Employer stated that the workman abandoned his services and that by letter dated 9-5-87 the employer informed the workman that his absentism had led to abandoning the services and therefore w.e.f. 14-2-87 his name has been struck off from the muster roll. Under Sec. 10 of the Industrial Disputes Act 1947, what is to be referred for adjudication is the industrial dispute. Industrial Dispute is defined u/s 2(k) of the I.D. Act, 1947 as, "Dispute or difference between employers and employers or between employers and workman or between workman and workman which is connected with employment or non. employment or the terms of employment or with the conditions of labour of any person." It therefore follows that basically what is to be referred for adjudication is real dispute or difference between the parties. Before the conciliation officer i.e. the Asst. Labour Commissioner, the real dispute or difference between the parties was whether the services of the workman were terminated by the employer as contended by the workman or he abandoned the services as contended by the employer, as reflected in the minutes of the conciliation proceedings Exb. 16-E and the failure report Exb. 17-E. The facts of the case in the case of Sitaram Shirodkar (Supra) relied upon by Shri Cuncolienkar are identical with the facts of the case involved in the present case. As in the present case, in the case of Sitaram Shirodkar also, the real dispute was whether the services of the workman were terminated or whether he voluntarily abandoned his services and the Government made reference to the effect whether the termination of the services of the workman is legal and justified and if the answer is in the negative, to what relief the workman is entitled to? The Bombay High Court in the said case held that the Tribunal could not travel

beyond the reference and decide the question whether the workman had abandoned his services. The High Court further observed that by the said reference the employer terminated the services of the workman was an act fasten on the employer and the only question left open for decision was whether the termination was legal and proper. In the circumstances the Bombay High Court held that the reference itself was bad in law and liable to be quashed and accordingly the reference was quashed. Adv. B. G. Kamat has tried to distinguish the said decision of the Bombay High Court by saying that in Sitaram Shirodkar's case (Supra) no issues as regards abandonment of services was framed whereas in the present case an issue has been framed to that effect and therefore the reference is valid. I do not agree with this submission of Adv. Kamat. The validity of the reference does not depend upon the pleadings of the parties and framing of the issues in that respect. The question is whether the Tribunal can decide beyond what is referred to it. Even if the contention of Adv. B. G. Kamat is accepted that the issue of abandonment of services has been framed in the present case, still the question would be whether the Tribunal could decide whether the workman had abandoned the services. The Bombay High Court in the Sitaram Shirodkar's case (Supra) has clearly held that when a reference is made to the effect whether the action of the employer in terminating the services of the workman is legal and justified, the act of termination of services is fasten on the employer by such reference and the only question left open for decision is whether the termination is legal and proper. In such a case the termination of the services is presumed. This being the case, it means that the tribunal would not be empowered to decide whether the workman had abandoned his services or not. I am therefore of the opinion that Adv. B. G. Kamat has failed in his attempt to distinguish the decision of the Bombay High Court in Sitaram Shirodkar's case. Thus, applying the law laid down by the Bombay High Court in Sitaram Shirodkar's case which is binding on this Tribunal, I hold that reference made by the Government is invalid and bad in law. Once it is held that the reference is bad in law the question of deciding the issues framed at Exb.6 does not arise. In the circumstances, I pass the following order.

#### ORDER

It is hereby held that the reference made by the Government of Goa is bad in law and hence the question of deciding the reference does not arise.

There shall be no order as to costs. Inform the Government accordingly.

Sd/-  
(AJIT J. AGNI),  
Presiding Officer,  
Industrial Tribunal.

#### Order

No. 28/2/89-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

F. O. D'Costa, Under Secretary (Labour).

Panaji, 23rd June, 1995.

#### IN THE INDUSTRIAL TRIBUNAL

#### GOVERNMENT OF GOA

#### AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/35/89

Workmen

Rep. by Goa Trade &

Commercial Workers Union. ... Workmen/Party I

v/s

M/s Kane Industries.

Navelim, Salcete Goa. ...Employer/Party II

Party I represented by Adv. Raju Mangueshkar.

Party II represented by Adv. P. J. Kamat.

Panaji, dated: 5-6-1995.

#### AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa by Order dated 8th May, 1989 bearing No. 28/2/89 ILD referred the following dispute for adjudication by this Tribunal.

"Whether the following demands raised by the Goa Trade & Commercial Workers' Union before the management of M/s Kane Industries, Navelim, are justified?

The schedule is appended by as many as 11 demands for (1) Flat Rise, (2) Pay Scale and Grade, (3) Fitment, (4) Dearness Allowance, (5) Variable Dearness Allowance, (6) House Rent Allowance, (7) Travelling & Sundry Allowance, (8) Festival Allowance, (9) Regularisation of services of all temporary workers, (10) Leave facilities and (11) Leave cards/Pay Slips."

2. On receipt of the reference the case was registered under No. IT/35/89 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Party I (for short, 'Union') filed the statement of claim which is at Exb. 2. In the statement of claim the union contended that the cost of leaving in Goa is amongst the highest in India as also the cost/rentals and the transport cost. The Union contended that the salaries of the workmen have remained stagnant while the cost of leaving is increasing day by day, and therefore it has become difficult for the workmen to support their families. The Union therefore contended that the workmen were entitled to the increase in salaries and other facilities as demanded in the charter of demands submitted by the Union to the Party II (for short 'Employer'). The Union also raised various contentions in its statement of claim justifying the demands made by the workers of the employer.

3. The Employer filed written statement which is at Exb. 3. The Employer contended that the reference is bad in law as the

employer had closed down its factory w. e. f. 15-11-88 and an industrial dispute in relation to a closed industry is not open to judicial scrutiny. The Employer further contended that it could not fulfill the work promises given to its customers and as such the business was lost. That also since the main business of the employer was repairs of mining machinery and the mining business was in difficulty the employer could not secure enough work. The employer therefore contended that due to financial difficulties it could not accede to the exorbitant demands of the union and had to close its factory. The employer stated that the union had not justified the demands made by the union on behalf of the workmen and hence the demands were liable to be rejected.

4. On the pleadings of the parties, issues were framed at Exb. 5 and thereafter the case was fixed for evidence of the union. The case was adjourned on several occasions on the ground that the parties wanted to settle the dispute. On 15-5-95, when the case was fixed for hearing, the union and the employer filed an application dated 15-5-1995 admitting that the factory was closed. The parties also stated that the monetary disputes in reference No. IT/34/89 and IT/45/89 between the parties were

also settled. The Union and the Employer therefore prayed that no dispute award be passed as the dispute does not survive.

5. Since the factory of the employer is closed permanently and the monetary disputes are also settled which fact is admitted by the Union, the dispute does not exist and consequently the reference does not survive. In the circumstances, I pass the following order.

#### ORDER

It is hereby held that the reference does not survive since the dispute does not exist in view of the permanent closure of the factory of M/s Kane Industries, Navelim, Salcete Goa, and the settlement of the monetary disputes of the Party I-Union.

There shall be no order as to costs. Inform the Government accordingly.

Sd/-

(AJIT J. AGNI),  
Presiding Officer,  
Industrial Tribunal.